

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii**

August 22, 2008

Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii

REGARDING: Conservation District Enforcement File MO-08-28
Regarding the Alleged Unauthorized Construction of a
Cement Pad Within Coastal Waters

BY: Hui Malama O Moomomi (HMM)

AREA OF USE: \approx 150 square feet

LOCATION: Submerged State Land
Makai of TMK (2): 5-2-005: 006/019
Moomomi Bay, Hoolehua, Island of Molokai

SUBZONE: Resource

BACKGROUND:

This matter was previously deferred at the June 13, 2008 Board of Land and Natural Resources meeting.

DESCRIPTION OF AREA:

The subject area is located on the shores of Moomomi Bay, on the north side of the island of Molokai. The coastal lands appear to lie within the General subzone; and within the Resource subzone of the Conservation District makai of the shoreline. The land mauka of the shoreline is under the Department of Hawaiian Homelands. The Moomomi Recreational and Cultural Park is located in this area.

The locality is a wind swept, rocky coast with an isolated beach. Rocks and a terrace of beach rock protrude from beneath a thin veneer of sand at the subject site. The shoreline may be sandy and only during the summer months when the ocean is calmer should swimming be attempted. During the winter, the waves wash away a large portion of the beach.

This region of north Molokai is undeveloped and access is by foot, by sea or by 4-wheel drive vehicle across Hawaiian Homelands. The vehicular access way to the slab appears to be an intermittent stream outlet to the ocean (**Exhibits 1, 2 & 3**).

ALLEGED UNAUTHORIZED LAND USES:

The Office of Conservation and Coastal Lands (OCCL) began receiving several complaints in 2008 regarding the existing cement slab in the shoreline at the subject location. A site inspection of the subject area was conducted by the OCCL on the morning of June 18, 2008. The slab is described as being $\approx 150 \text{ ft}^2$ and created with rebar and wire with a depth of ≈ 4 -feet. According to information gathered, the alleged unauthorized land use has been utilized as a boat launch for fishermen (**Exhibit 4, 5 & 6**).

The cement slab appears to lie makai of the shoreline as evidenced by sand deposits mauka of the slab. The slab and immediate vicinity appears to be maintained as area rocks have been moved to define the pathway for ocean entry and to reinforcement the slab. Affects to the beach resource appear to be minimal and localized to adjacent areas of the slab.

Discussions with Staff of the Department of Hawaiian Homelands (DHHL), noted that the fast land area is under a license agreement with Hui Malama O Moomomi (HMM), to manage DHHL land. Correspondences to and from HMM indicated that the alleged violation was created by HMM. (**Exhibit 7, 8, 9 & 10**).

In addition, the OCCL also received correspondence from the Maui County Fire Department indicating that the HMM installed slab is critical for rescue efforts along the northwest coast of Molokai, as there is no boat launching facilities. Without the concrete slab to provide traction, the Fire Rescue Craft would be launched on the South side of the island delaying rescue operations and potential loss of life (**Exhibit 11**).

RESOLUTION OF ALLEGED UNAUTHORIZED LAND USES:

The Department and Board of Land and Natural Resources has jurisdiction over land lying makai of the shoreline as evidenced by the upper reaches of the wash of the waves other than storm and seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limits of debris left by the wash of the waves, pursuant to §205A-1, Hawaii Revised Statutes (HRS), Definitions.

As evidenced by sand deposits, Staff believes that the cement slab is located makai of the shoreline. Based on the evidence available, the OCCL has sufficient cause to bring this matter to the Board since it is evident that the structure was placed within the Conservation District pursuant to the Hawaii Administrative Rules (HAR), §15-15-20 Standards for determining "C" conservation district boundaries:

It shall include lands having an elevation below the shoreline as stated by §205A-1, HRS, marine waters, fishponds, and tidepools of the State, and accreted portions of lands pursuant to §501-33, HRS, unless otherwise designated on the district maps. All offshore and outlying islands of the State are classified conservation unless otherwise designated on the land use district maps.

Conservation District

Chapter 13-5, Hawaii Administrative Rules (HAR) and Chapter 183C, Hawaii Revised Statutes (HRS), regulate land uses in the Conservation District by identifying a list of uses that may be allowed by Conservation District Use Permit. The chapters also provide for penalties, collection of administrative costs and damages to state land for uses that are not allowed or for which no permit has been obtained. Chapter 13-5, HAR defines "land use" in part as: the placement or erection of any solid material on land or the grading, removing or dredging of any material or natural resource on land.

The alleged unauthorized construction of the cement slab is a land use that occurred in the Conservation District without a permit, and therefore violates the above chapters. This report and staff recommended conditions seek to resolve this conservation district violation. Pursuant to Chapter 183C, HRS, the maximum fine for a conservation district violation is \$15,000.00 per violation, or \$15,000.00 per day.¹

DISCUSSION

According to correspondence received by HMM, the slab appears to have been built after May 2001. In this particular case, there is minimal to no sand in the littoral system and the area mauka of the slab is composed of rocky cliff. The shoreline does remain dynamic, and the slab does not appear to be affecting littoral processes or sand supply. The purpose of the slab is not to mitigate coastal erosion or to protect fast lands. The intent of the cement slab is to improve access to the ocean for boat or watercraft launching for public benefit.

Staff notes there is no boat launching facilities on the northwest coast of Molokai. Staff notes the Fire Department has stated that the subject cement slab is critical for rescue efforts and that, without the concrete slab to provide traction, the Fire Rescue Craft would need to be launched on the south side of the island, thus delaying rescue operations and increasing the potential loss of life. Staff believes that a boat launch facility is a reasonable use that could be applied for on the northwest coast of Molokai to better serve the people of Molokai and to insure the public's health, safety and welfare.

Nevertheless, authorization must be obtained prior to constructing this type of land use within the Conservation District. Furthermore, an easement for the encroaching slab is required from the State. Preliminary discussions with the Maui District Land Office indicate that there are reservations in issuing an easement for the structure.

However, Staff recommends that Hui Malama O Moomomi, be found in violation of Chapter 183C, HRS and either remove the structure or apply for an after the fact Conservation District Use Application for the encroaching structure.

¹ Act 217 that increases the maximum fine for Conservation District violations from \$2,000 to \$15,000 was signed into law on July 7, 2008. In this particular case, the prior maximum fine of \$2,000 is recommended, as this matter was originally presented to the Board on June 13, 2008 that was prior to the change in the law.

This submittal and notice of the Board's meeting shall be sent to Hui Malama O Moomomi by certified mail to the address of record in Hawaii.

FINDINGS

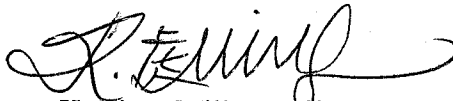
1. That Hui Malama O Moomomi did in fact, authorize, cause or allow the unauthorized construction of the cement slab to occur;
2. That the unauthorized land use lies on State submerged land within the State Land Use Conservation District, Resource subzone, as evidenced by the sand deposits and dynamic shoreline;

AS SUCH, STAFF RECOMMENDS AS FOLLOWS:

That, pursuant to Chapter 183C, Hawaii Revised Statutes (HRS), the Board finds Hui Malama O Moomomi in violation of Chapter 183C, HRS and Chapter 13-5, Hawaii Administrative Rules (HAR), and is subject to the following:

1. Hui Malama O Moomomi violated the provisions of Chapter 183C, Hawaii Revised Statutes (HRS), and Chapter 13-5, Hawaii Administrative Rules (HAR), in one instance by constructing a shoreline structure. The alleged is fined a total of \$2,000.00 for one Conservation District violation;
2. Hui Malama O Moomomi is fined an additional \$300.00 for administrative costs associated with the subject violations;
3. Hui Malama O Moomomi shall pay all fines (total \$2,300.00) within sixty (60) days of the date of the Board's action;
4. That within 180 days of the date of the Board's action, Hui Malama O Moomomi shall either remove the structure or file for an after the fact Conservation District Use Application for the cement slab;
6. That in the event of failure of the alleged to comply with any order herein, Hui Malama O Moomomi shall be fined an additional \$2,000.00 per day until the order is complied with; and
7. That in the event of failure of Hui Malama O Moomomi to comply with any order herein, the matter shall be turned over to the Attorney General for disposition, including all administrative costs.

Respectfully submitted,



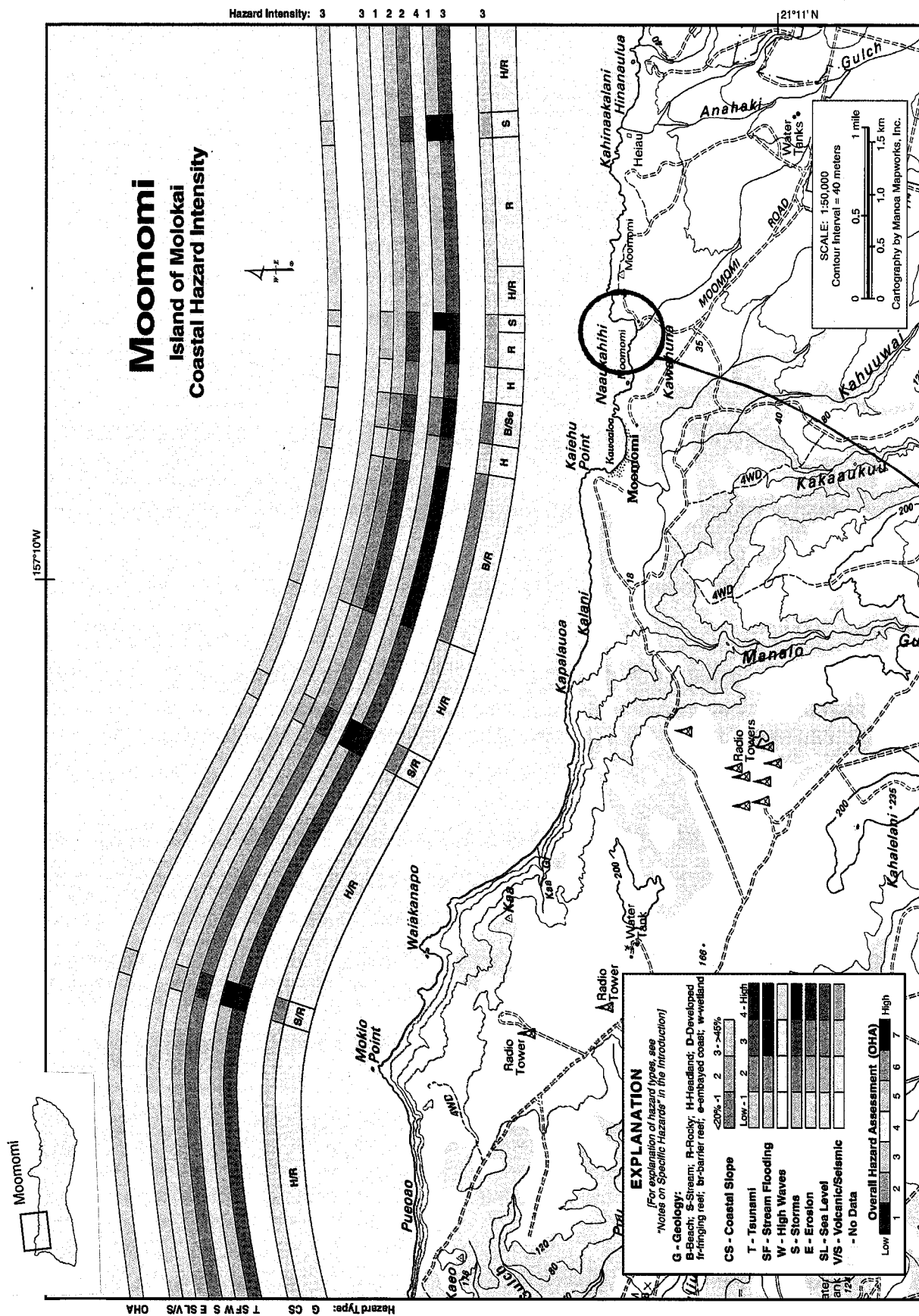
K. Tiger Mills, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:

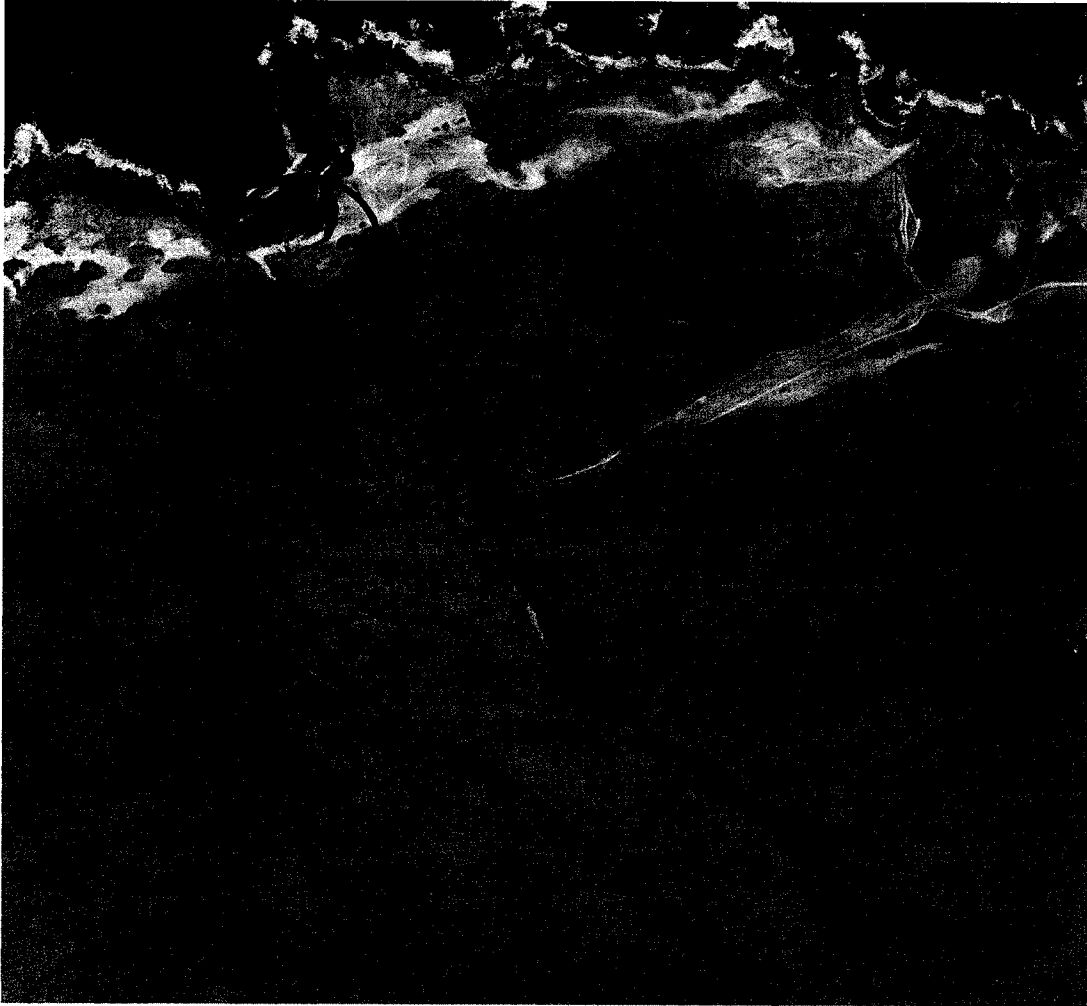
A handwritten signature in black ink, appearing to read 'LH Thielen', is written over a horizontal line.

LAURA H. THIELEN, Chairperson
Board of Land and Natural Resources

Hazard Type: G CS T SFW S E SLV/S OHA



Aerial



Facing northwest

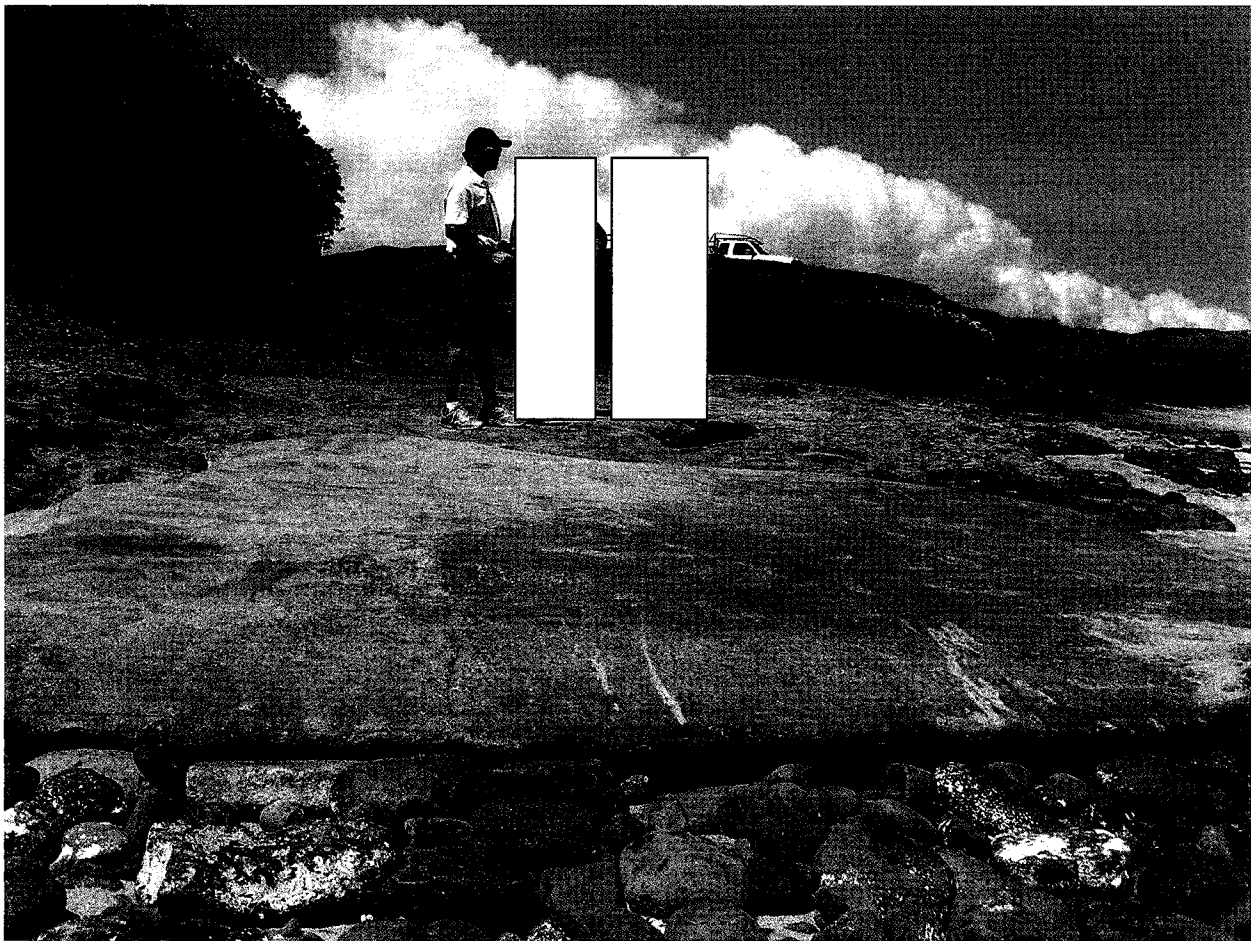


EXHIBIT 2

Facing East

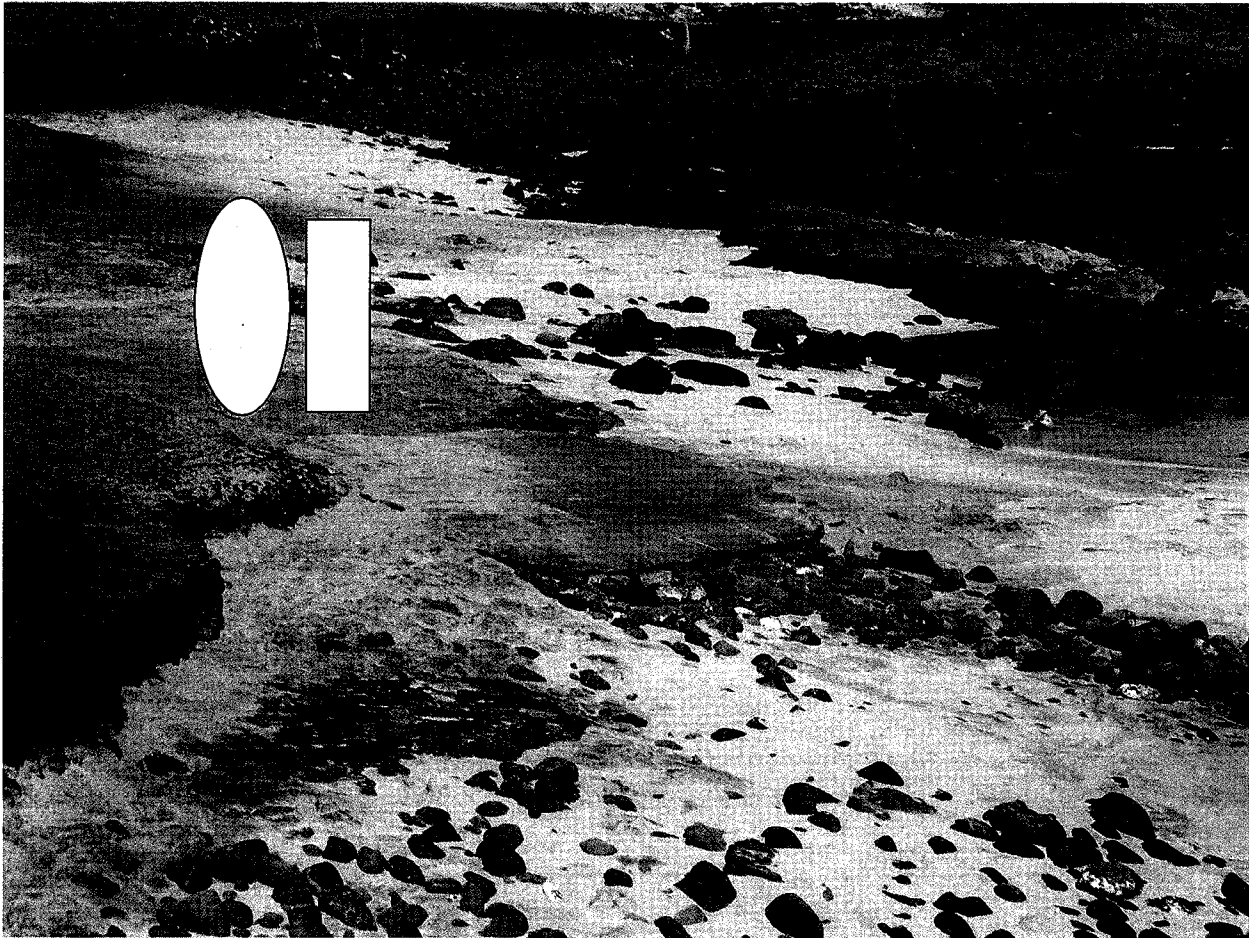


EXHIBIT 3



Moomomi site Inspection June 18, 2008





Moomomi Site Inspection June 18, 2008

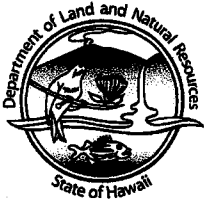




Moomomi Site Inspection June 18, 2008



LINDA LINGLE
GOVERNOR OF HAWAII



LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
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AQUATIC RESOURCES
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CONSERVATION AND RESOURCES ENFORCEMENT

ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LAND
POST OFFICE BOX 621
HONOLULU, HAWAII 96809

REF:OCCL:TM

CERTIFIED MAIL/RETURN RECEIPT

7007 0710 0003 9987 8329

Hui Malama 'O Moomomi
P.O. Box 173
Kealapuu, Molokai 96757

ENF: MO 08-28

FEB 29 2008

Dear Hui Malama 'O Moomomi,

SUBJECT: Alleged Unauthorized Land Use Located on Submerged State Land, Moomomi Bay, Island of Molokai, adjacent to TMK: (2) 5-2-005:006

The Office of Conservation and Coastal Lands (OCCL) has become aware that an alleged unauthorized land use exists along the subject shoreline that may have been created by Hui Malama 'O Moomomi (**Exhibit A**). The subject area appears to be within the Conservation District, Resource subzone under the jurisdiction of the State of Hawaii. We have no records of approval for the subject land use consisting of a cement slab that has been utilized as a boat launch.

Please provide documentation of authorization for the alleged unauthorized land use. Please be aware that the Board of Land and Natural Resources has adopted a "no tolerance" policy for recent or new unauthorized shoreline structures. Should the subject land use be unauthorized, your organization may wish to remove the cement slab to resolve this matter. Please respond within 15 days. Should you have any questions regarding this correspondence, contact Tiger Mills of our State Office of Conservation and Coastal Lands at (808) 587-0382.

Sincerely

A large, stylized handwritten signature in black ink, likely belonging to Samuel J. Lemmo, is written over the word "Sincerely".

Samuel J. Lemmo, Administrator
Office of Conservation and Coastal Lands

c: Chairperson
DHHL/MDLO/DOCARE-Molokai
County of Maui, Department of Planning

EXHIBIT 7

February 5, 2008 Site Inspection



This photograph depicts a concrete slab at Moomomi. Moomomi Bay in background.

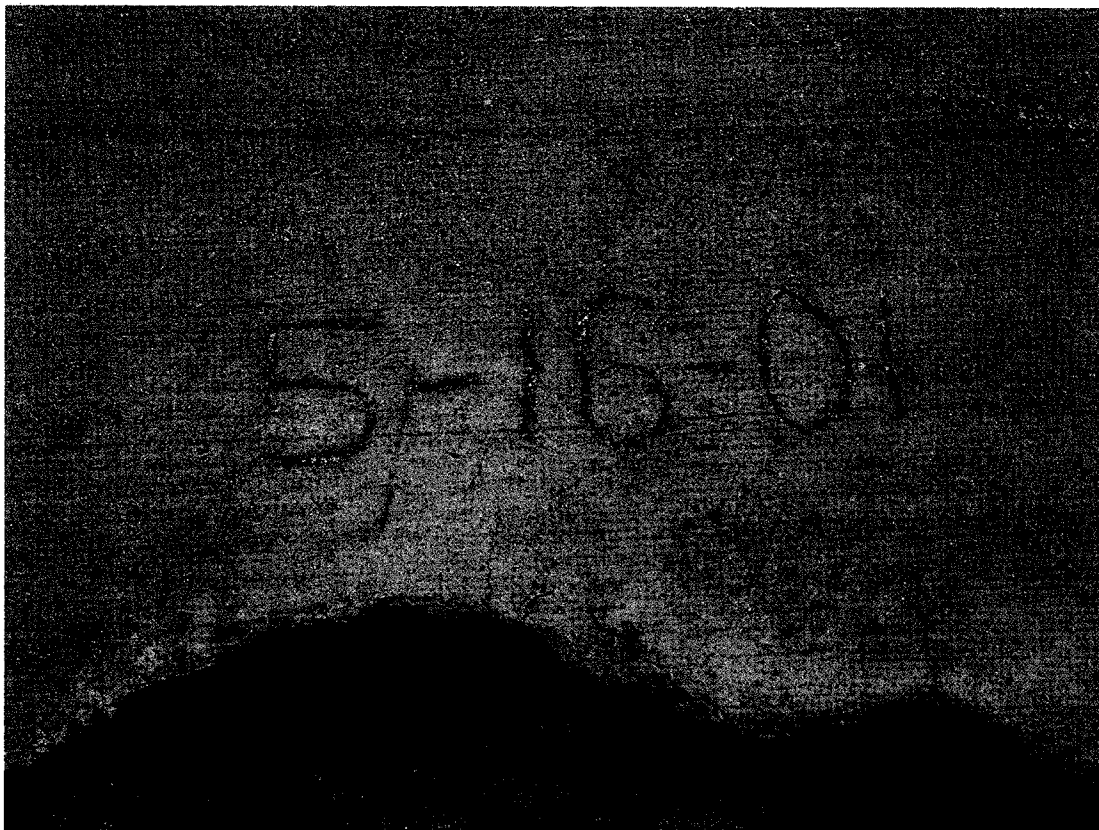


EXHIBIT A

March 26, 2008

State of Hawaii Department of
Land and Natural Resources
Office of Conservation and Coastal Land
P.O. Box 621
Honolulu, Hawaii 96809
Attention: Tiger Mills, reference OCCC-TM

RECEIVED
OFFICE OF CONSERVATION
STATE OF HAWAII

2008 APR -1 A 10: 01

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Subject: Alleged Unauthorized Land Use Located on Mo'omomi Bay,
Island of Moloka'i, adjacent to TMK: (2) 5-2-005:006

Aloha Ms. Mills:

This responds to your letter, reference OCCC-TM, regarding the small cement block that Hui Malama o Mo'omomi (Hui) installed at Mo'omomi Bay on May 16, 2001.

This improvement is one of many that have been made by the Hui on coastal property leased from the Department of Hawaiian Home Lands (DHHL) under a license agreement. All of these improvements aim to benefit a Native Hawaiian community of over 1,000 living in Ho'olehua Homesteads. The license agreement requires the Hui to maintain and improve the property for community benefit and to act as the steward of local resources.

The cement slab was installed to ease small boat launching by community members for fishing to feed their families. Over 1,000 Native Hawaiians benefit from the impromptu ramp. Another purpose of the cement slab is to stop the sand erosion that was occurring prior to May 2001, as small boats were launched over the Mo'omomi beach sand. In many instances, trucks got bogged down in the sand, spinning their wheels and displacing beach sand down to bedrock. As one of only two beaches along the northwest coast of Moloka'i, Mo'omomi sand is a scarce resource that needs to be conserved against the natural erosion of large winter storm waves. Not only are there significant community benefits from the ramp but it also allows the Maui County Fire Department Rescue based at the Ho'olehua station to launch rescue craft in emergency situations. There is no other small boat launching site along the entire northwest coast of Moloka'i, so the cement slab has facilitated rescues at sea and probably saved a few lives.

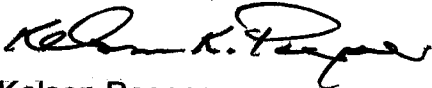
↘ The cement slab is just one of many actions take by the Hui to accomplish its mission of fixing problems along the Mo'omomi coast. The Hui is largely self-reliant in these activities, which are compatible with and encouraged by our license agreement with DHHL.

EXHIBIT 8

We do not expect help from State agencies in addressing such problems because we have never received any help that has been requested in our 14-year history of community-based resource management. The latest example occurred in January 2006, when a dead humpback whale washed onto a gravel beach east of Mo'omomi Bay. I contacted numerous Federal and State agencies requesting assistance in removing the carcass, which was rotting and poisoning local waters where Native Hawaiians gather seafood for subsistence. No help was given and members of our Hui had to haul the carcass onto the gravel beach, with some assistance from Maui County personnel.

I hope your office will consider the above information in enforcing your "zero tolerance" policy for permits. The Hui could benefit from a true partnership with the DLNR that would build mutual respect for each other's visions, policies and priorities.

Mahalo nui loa,



Kelson Poepoe
Resource Manager,
Hui Malama o Mo'omomi
P.O. Box 173
Kualapu'u, Moloka'i, HI 96757



Jeffrey S
Walters/DLNR/StateHiUS
04/10/2008 03:22 PM

To Kimberly Mills/DLNR/StateHiUS@StateHiUS

cc

bcc

Subject Re: For dead whale removal

Tiger:

In general, any type of marine mammal death, stranding, entanglement, injury, etc., should be reported as soon as possible to the NOAA Marine Mammal Hotline, at 1-888-256-9840. Once the animal is dead and NOAA has "released" the carcass, the state (DAR) and the county typically negotiate who is best equipped to dispose of the carcass, and this depends on the county, the location, the condition of the carcass, etc.

I consulted with our aquatic biologist on Molokai and the NOAA marine mammal response coordinator regarding the case mentioned in the letter and the following is a summary of what happened. The carcass was in a location that was extremely difficult to access with any sort of heavy equipment necessary to move the carcass, which weighed several tons. It was in the shorebreak of a gravel/cobble beach with steep slopes mauka and no nearby road access. NOAA and DAR staff responded, took tissue samples, posted warning signs, and consulted with the county and various community members to determine the best course of action. The county ended up hand-carrying a winch over hundreds of feet of rough terrain and used it to drag the carcass (in peices) up onto the shore. Attempts were made to burn the carcass, but this apparently was not very effective. Without any way to get a front-end loader, back-hoe or other heavy equipment down to the carcass, there really was no other option. Once the carcass is hard aground on the shore pulling it back out to sea is also extremely difficult - the carcass drags over and destroys reef and inshore habitat, and typically falls apart, and then you have an even worse situation with 1 ton chunks of carcass drifting all over the place, attracting more sharks, etc.

If you communicate with Mr. Poepoe about this, please know that the federal and state officials did indeed respond and did do all that was physically possible to address the situation, and the county also did its best under quite difficult circumstances. We do a lot of outreach with boaters, fishers, and other ocean users so that they know to report carcasses out in the water as soon as they are spotted - that way we can respond out on the water in a vessel and tow the carcass far offshore to avoid the problems that arise when a carcass washes up. As long as a carcass is still free-floating, it is relatively easy to get a line around it and tow it out in one piece. If the people of Moomomi ever see a carcass floating in the water in the future, if they call in to the hotline number above, we will do all we can to get a vessel over there ASAP to tow the carcass out to sea and avoid having the carcass wash up on shore and the situation they had to deal with back in January 2006. Once it's on the beach over there, the coastal geography and access issues make large-whale carcass removal almost impossible.

Thanks,

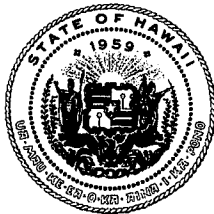
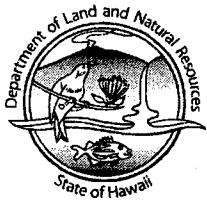
Jeff

~~~~~  
Jeffrey S. Walters, Ph.D.  
Co-Manager  
Hawaiian Islands Humpback Whale National Marine Sanctuary  
Department of Land and Natural Resources  
1151 Punchbowl St., Rm 330  
Honolulu, HI 96813  
(808) 587-0106  
(808) 587-0115 fax  
jeffrey.s.walters@hawaii.gov  
<http://hawaiihumpbackwhale.noaa.gov>

EXHIBIT 9



LINDA LINGLE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
OFFICE OF CONSERVATION AND COASTAL LANDS  
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

LAURA H. THIELEN  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI  
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ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

REF:OCCL:TM

ENF: MO 08-28

Kelson Poepoe, Resource Manager  
Hui Malama O Moomomi  
P.O. Box 173  
Kualapuu, HI 96757

APR 15 2008

Dear Mr. Poepoe,

SUBJECT: Unauthorized Land Use Located at Moomomi, Molokai, Makai of TMK: (2) 5-2-005:006

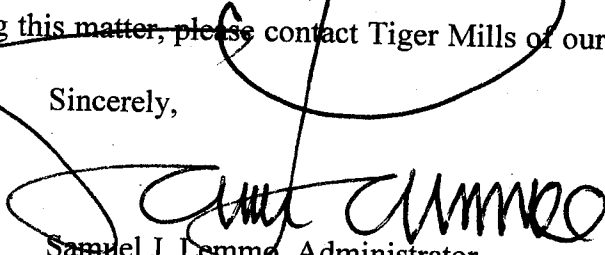
The Office of Conservation and Coastal Lands (OCCL) is in receipt of your correspondence regarding the unauthorized cement slab located within the shoreline of Moomomi. According to your information, the cement slab was installed by Hui Malama O Moomomi to facilitate small boat launchings. You have further stated that the Maui County Fire Department launches rescue crafts from the subject site in emergency situations and that there are no small boat launching sites along the northwest coast of Molokai.

Our Office is also in receipt of a correspondence from the Maui County Fire Department indicating that the cement slab is critical for rescue efforts and that the loss of the cement slab/ramp may delay rescue operations in emergencies potentially risking public health safety and welfare.

Our Office is required to adhere to State laws and policies. Therefore this matter shall be scheduled before the Board of Land and Natural Resources in the near future. The OCCL shall send you notice of this meeting along with a copy of the Board submittal with Staff recommendations.

Should you have any questions regarding this matter, please contact Tiger Mills of our Office at (808) 587-0382.

Sincerely,

  
Samuel J. Lemmo, Administrator  
Office of Conservation and Coastal Lands

C: Chairperson  
MDLO/DOCARE-MO  
DHHL-Todd Gray  
County of Maui, Department of Planning

EXHIBIT 10

Maui County Fire Department  
Hoolehua Station, E#9

RECEIVED  
OFFICE OF CONSERVATION  
DEPT. OF LAND & NATURAL RESOURCES

State of Hawaii Department of Land and Natural Resources  
Office of Conservation and Coastal Land  
PO Box 621  
Honolulu, Hawaii 96809  
Attention: Tiger Mills, reference OCCC-TM

2008 APR -1 A 10: 01

DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

Subject: Alleged Unauthorized Land Use Located on Mo'omomi Bay,  
Island of Moloka'i, adjacent to TMK: (2) -2-005:006

Ms. Mills:

This is in reference to your letter, OCCC-TM, regarding the small cement slab that Hui Malama o Mo'omomi installed on May 16, 2001, to facilitate small-boat launching at Mo'omomi Bay. I want to assure you that this impromptu launch site is critical for rescue efforts along the northwest coast of Moloka'i, where there are no other boat launching facilities of any kind. Without this concrete slab to provide traction for our truck, we could not launch or retrieve Fire Rescue craft from this rough coast and we would have to launch on the south shore of the island and make a long boat trip to the north coast. This would greatly delay boat rescue operations in emergencies and could put boaters in distress at risk of losing their lives. The County Fire Department's policy is to prevent such tragedy.

Yours truly,

*Miller K Maioho* 27 MARCH 2008

Miller K Maioho, Captain E9/B

EXHIBIT II